

**UNITED STATES COURT OF APPEALS**

**APR 28 2005**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

DONNIE RAY HARMON,

Petitioner - Appellant,

vs.

REGINALD HINES,

Respondent - Appellee.

No. 04-6286  
(D.C. No. 03-1598-F)  
(W.D. Okla.)

**ORDER**  
**DENYING CERTIFICATE OF APPEALABILITY**

Before **KELLY, O'BRIEN**, and **TYMKOVICH**, Circuit Judges.

Petitioner-Appellant Donnie Ray Harmon, a state prisoner appearing pro se, seeks a certificate of appealability ("COA") allowing him to appeal the district court's order denying his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Because we determine that Mr. Harmon has not made a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 483-84 (2000), we deny a COA and dismiss the appeal.

The parties are familiar with the facts, and we need not restate them here. On appeal, Mr. Harmon reasserts the claims he presented below, specifically that (1) there was insufficient evidence to prove the essential elements of assault and

battery on a police officer (after former conviction of two or more felonies), (2) his arrest was unlawful, and (3) he received ineffective assistance of trial counsel. After careful consideration of the materials submitted by Mr. Harmon against a backdrop of the state court record, it is apparent that the conclusions of district court, upon adoption of the report and recommendation of the magistrate judge, are not reasonably debatable. See Miller-El v. Cockrell, 537 U.S. 322, 327 (2003); R. Doc. 24, 26.

Mr. Harmon's application for a COA is DENIED, and the appeal is DISMISSED.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge